

DR. AMBEDKAR: THE PRINCIPAL ARCHITECT OF THE CONSTITUTION OF INDIA

Clause wise Discussion on the Draft Constitution

30th July 1949 to 16th September 1949

SECTION SIX

Clausewise Discussion

(Paragraph 15)

(Amendment No. 140 was not moved.)

The Honorable Dr. B. R. Ambedkar; Sir, I move:

" That sub-paragraph (3) of paragraph 15 be omitted."

That is because it gives discretion to the Governor which it is not proposed now to leave with him.

Mr. President: Amendment No. 142 : we have dealt with the question of discretion so many times. Is it necessary to move it?

Shri Brajeshwar Prasad: As you direct me. Sir.

Mr. President: I do not think it is necessary. Amendment 214: again "President" for "Governor"; Amendment 215: "Parliament" for "legislature of the State"; Amendment 216: that is the same as Dr. Ambedkar's. These are all the amendments. Dr. Ambedkar, would you like to say anything?

The Honorable Dr. B. R. Ambedkar: No. As I have said we are taking away the discretion from the Governor which we had originally laid with him and it is therefore necessary to delete this sub-para (3),

(The amendment of Dr. Ambedkar was adopted.)

[Paragraph 15, as amended, was added to the Schedule.]

Shri Brajeshwar Prasad: Sir, I would suggest that we sit for a few minutes more and finish this schedule.

Mr. President: It will take time. We may not be able to finish. I was just going to remind the House that we are very much behind our scheduled time and something will have to be done to catch up the lost time.

Shri R. K. Sidhva (C. P. & Berar: General): Today we have no other words and we may sit in the afternoon.

The Honorable Dr. B. R. Ambedkar: Tomorrow If you like we can sit. Today we have called a meeting of the Drafting Committee to take up some articles

which have remained for consideration.

(Paragraph 16)

Mr. President: There are two other amendments which I rule out, because they are on the same lines as the other amendment of Shri Brajeshwar Prasad. Dr. Ambedkar, do you wish to say anything?

The Honorable Dr. B. R. Ambedkar: (Bombay: General): I should like to hear the Premier of Assam, if he has any views on this matter.

The Honorable Shri Gopinath Bardoloi (Assam: General): Sir, with reference to the amendment moved by Srijut Chaliha just now for the deletion of the second proviso to paragraph 16, all that I have to say is that in every case where action of this kind is taken—the parties affected thereby are given an opportunity of being heard. I agree that in this proviso no machinery by which this could be done has been laid down. Therefore, if Srijut Chaliha would modify his amendment as follows, namely, that instead of the words "opportunity of being heard by the legislature" the words "an opportunity of placing the views of the Regional Council" may be substituted, then the purpose of his amendment would be served.

Shri Kuladhar Chaliha: I am prepared to do that.

The Honorable Dr. B. R. Ambedkar: I am prepared to accept the amendment of Mr. Bardoloi to the amendment of Mr. Chaliha, which he has accepted. The proviso will now read like this :

" Provided further that no action shall be taken under clause (b) of this paragraph without giving the District or the Regional Council as the case may be an opportunity of placing their views before the legislature of the State."

Mr. President" The question is :

" That for the second proviso to paragraph 16 of the Sixth Schedule, the following be substituted:

' Provided further that no action shall be taken under clause (h) of this paragraph without giving the District or the Regional Council as the case may be an opportunity of placing their views before the legislature of the State.' "

The amendment was adopted

[Paragraph 16, as amended, was added to the Sixth Schedule.]

(New Paragraph 16-A)

The Honorable Dr. B. R. Ambedkar: Sir, I beg to move :

" That .after paragraph 16, the following paragraph be inserted :—

' 16 A. *Exclusion of areas from autonomous districts informing constituencies in such districts.*—For the purpose of elections to the Legislative Assembly of Assam the Governor may by order declare that any area within an autonomous district shall not form part of any constituency to fill a scat or seats in the Assembly reserved for any such districts but shall form part of a constituency to fill a seat or seats in the Assembly not so reserved to be specified in the order '."

The object of this is to give the people who are included in the autonomous districts but really who are not part and parcel of the people inhabiting the autonomous districts an opportunity to have a place in the Legislative Assembly by having their own constituencies marked out for them.

(Paragraph 16-A was added to the Sixth Schedule.)

(Paragraph 17)

The Honorable Dr. B. R. Ambedkar: Sir, I move :

" That after sub-paragraph (2) of paragraph 17 the following sub-paragraph be added:—
' (3) In the discharge of his functions under sub-paragraph (2) of this paragraph as the agent of the President, the Governor shall act in his discretion.' "

The Honorable Dr. B. R. Ambedkar: I do not accept it. Sir.

Mr. President: Then I put Dr. Ambedkar's amendment first. The question is:

"That after sub-paragraph (2) of paragraph 17, the following sub-paragraph be added:—
" (3) In the discharge of his functions under sub-paragraph (2) of this paragraph as the agent of the President, the Governor shall act in his discretion."

(The amendment was adopted.)

(Amendment of Brajeshwar Prasad was rejected).

[Paragraph 17, as amended, was added to the Sixth Schedule.]

(Paragraph 18)

The Honorable Dr. B. R. Ambedkar: Sir, I move :

"That in paragraph 18, in line 22, the words ' in his discretion ' be deleted."

" That clause (c) of paragraph 18 be deleted."

Mr. President: Amendment Nos. 148 and 149 are ruled out. Then we have amendments Nos. 223, 224, 225 and 226 which are more or less on the same lines. Would you like to move No. 226, Mr. Brajeshwar Prasad? The other three

I have ruled out.

Shri Brajeshwar Prasad : I do not like to move any of my amendments, Sir.

Mr. President: Then, I put Dr. Ambedkar's amendments No. 146 and 147.

(The amendments were adopted.)

[Paragraph 18, as amended, was added to the Sixth Schedule.]

(Paragraph 19)

The Honorable Dr. B. R. Ambedkar: Sir, I move:

" That with reference to amendments No. 150 and 151 of List I (Seventh Week) for paragraph 19 and the Table appended to it the following paragraph and Table be substituted:—

" 19. *Tribal areas.*—(1) The areas specified in Parts I and II of the Table below shall be the tribal areas within the State of Assam.

(2) The United Khasi-Jaintia Hills District shall comprise the territories which before the commencement of this Constitution were known as the Khasi States and the Khasi and Jaintia Hills District, excluding any areas for the time being comprised within the cantonment and municipality of Shillong, but including so much of the area comprised within the municipality of Shillong as formed part of the Khasi State of Myllem :

Provided that for the purposes of clauses (e) and (f) of sub-paragraph (1) of paragraph 4 and paragraph 5 and sub-paragraph (2), clauses (a), (b) and (d) of sub-paragraph (3) and sub-paragraph (4) of paragraph 8 of this Schedule, no part of the area comprised within the municipality of Shillong shall be deemed to be within the District.

(3) Any reference in the Table below to any district (other than the United Khasi—Jaintia Hills District) or administrative area, shall be construed as a reference to that district or area on the date of commencement of this Constitution:

Provided that the tribal areas specified in Part II of the Table below shall not include any such areas in the Plains as may, with the previous approval of the President, be notified by the Governor of Assam in this behalf.

**TABLE
PART—I**

1. The United Khasi-Jaintia Hills District.
2. The Garo Hills District.
3. The Lushai Hills District.
4. The Naga Hills District.
5. The North Cachar Hills.

6. The Mikir Hills District.

PART—II

1. North East Frontier Tract including Balipara Frontier Track, Tirap Frontier Tract Abor Hills District, Misimi Hills District.
2. The Naga Tribal Area.'

Shri Rohinikumar Chaudhari : .. .But I would say that the amendment which he (Dr. Ambedkar) has moved this morning is merely a Camouflage.

The Honorable Dr. B. R. Ambedkar: Camouflage for what?

Shri Rohini Kumar Chaudhuri : Because Dr. Ambedkar seems to indicate by this amendment that he has altered his view in regard to the inclusion of any part of the Shillong Municipality in the autonomous district.

Dr. Honorable Dr. B. R. Ambedkar: I have not altered my view

Shri Rohini Kumar Chaudhuri : Paragraph (2) of the amendment as it stand's includes...

Shri T. T. Krishnamachari : May I point out. Sir, that we here are completely disinterested in this matter and there is no need for any camouflage at all.

Mr. President: There is a question of camouflage because the paragraph is perfectly clear that he wants to exclude, the Municipality of Shillong except that part of it which is comprised in the stale of Myllem.

The Honorable Dr. B. R. Ambedkar: Sir, I did not think that my amendment No. 331 substituting a new text of paragraph 19 would cause any kind of difficulty such as the one which I now find. I did not. therefore, consider It necessary to spend much time in explaining the provisions contained in paragraph 19. But now that so much debate has taken place of an acrimonious sort I am bound to explain the provisions as contained in the new amended paragraph 19.

Now, the chief part of the controversy has centered round sub-paragraph (2) of paragraph 19. I should like to explain what this means. It mean's that so far as the United Khasi-Jainlia Hills District is concerned which is mentioned as entry I in Part I of the Table, that portion of the area comprised within the municipality of Shillong and which forms part of the Khasi Slate of Myllem shall be part and parcel of the United Khasi-Jaintia Hills District. It means that the part of the Myllem State which is included in Shillong will form part of the United Khasi-Jaintia Hills District, it is realised that this part of the Myllem State is really subject now under the new provisions of paragraph 19 to two separate jurisdictions. It is subject to the jurisdiction of the Municipality of Shillong,

because by this provision we are not altering the boundaries of the Shillong municipality. The boundaries of the Shillong municipality, as defined by the Municipal Act passed by the Assam legislature, remains intact. According to that Act this particular part of the Myllem State is part of the municipality. It is recognised that this double jurisdiction, namely the United Khasi-Jaintia Hills District and the municipality might come in conflict. In order to overcome this conflict, I have added the proviso to sub-clause (2). The effect of the proviso is this that for the purposes mentioned in the proviso the jurisdiction of the District Council of the United Khasi-Jaintia Hills District is ousted and to the extent that the jurisdiction of the municipality is restricted to this purpose mentioned in the proviso the jurisdiction of the District Council will continue over this area. The idea of the proviso is to avoid conflict of jurisdiction. Some people on the other side have said that the Myllem State area should be completely excluded from the United Khasi-Jaintia Hills District and should be made exclusively part and parcel of the Shillong municipality.

Pandit Hirday Nath Kunzru: As it is now.

The Honorable Dr. B. R. Ambedkar: I do not know whether that is so. The point is this, that as some one from that side said—I think my Friend Shri Rohini Kumar Chaudhuri—three-fourths of the municipality is really covered by this area. There is not the slightest doubt about it that so far as marriage laws, inheritance laws and other customs and manners are concerned, the people living in this part of the Myllem State share the same laws, the same customs, the same marriage laws and ceremonies of the whole district. Consequently what will happen is this. Supposing this area were completely excluded from the United Khasi-Jaintia Hills districts, the result will be that these people although they are fundamentally alike to their brethren in the rest of the part of the Myllem State with regard to marriage laws, their customs, etc., etc., they will become at once subject to the general law of inheritance, general law of marriage, all general laws which the Parliament may make or which the Assam Legislature may make. I do not think that it is right that a part of the people who are homogenous in certain matters should be severed in this manner. A part will obtain autonomy so far as their tribal life is concerned and a part will be subject to the general law to which the rest of the population is subject. It is for this reason that the Drafting Committee felt that the provision contained in sub-clause (2) and the proviso which accompanies it was the proper solution of this problem, namely, that for the purpose of the municipality as defined in the proviso that part of the Myllem State which is part of the municipality should remain subject to the municipality, while for purposes for which the district council is constituted that part should remain subject to the district council. There is no conflict and it helps to subserve the fundamental purpose, namely,

that a homogeneous people should be subject to the same sort of laws and to the same sort of administrative system which all of them should have and have.

Now, there may be some controversy as to whether the proviso is sufficiently big enough to cover all matters that ought to be covered or whether it is too narrow. I am not prepared to express any opinion about it. The Drafting Committee has been guided in this matter by the two principal representatives, who must be credited with sufficient knowledge and information about this matter, namely, the Premier of Assam and his colleague. Rev. Nichols-Roy. If they in their wisdom think that some other matters ought to be included, the Drafting Committee will certainly not raise any objection because the Drafting Committee has nothing to do with this matter.

Shri Rohini Kumar Chaudhuri: Is it that the non-tribal people who live in Shillong have no voice in this matter?

The Honorable Dr. B. R. Ambedkar: In what matter?

Shri Rohini Kumar Chaudhuri: In whatever matter you are touching on now.

The Honorable Dr. B. R. Ambedkar: I cannot understand the point. What we have done is that the people living in this part have a double right. They have a right to elect their representatives under the Shillong Municipality and they 'will have a right to elect their representatives in the District Councils. Beyond that, the jurisdiction is quite separate. I do not think there is any other point so far as this new paragraph 19 is concerned.

Shri Rohini Kumar Chaudhuri : On a point of information, does the Member who is now speaking, mean to say that those people in Dimapur where there is not a single tribal person, and those people in Shillong, are to be guided entirely by the opinion of Rev. Nichols-Roy.

Mr. President: He has not said anything about Dimapur. He is dealing with the question by Mr. Bardoloi that paragraph 10, subclause (d) of sub-paragraph (2) might be included in the proviso.

The Honorable Dr. B. R. Ambedkar: I have no objection. We leave the matter to them. If they think that certain matters should be included, why should we object? We are acting upon their advice.

Pandit Hirday Nath Kunzru: May I ask Dr. Ambedkar for information on the point? Has the Drafting Committee or Mr. Bardoloi and the Rev. J. J. M. Nichols-Roy who signed the report of the Tribal Areas Committee of Assam received any representation asking for a change in regard to the position of the tribal people living within the limits of the Shillong municipality?

The Honorable Dr. B. R. Ambedkar: I have not questioned their credentials nor have I examined whether they have fortified themselves with any such representation.

Pandit Hirday Nath Kunzru: I put this question because my Honorable

Friend referred to the authority of the Prime Minister of Assam and Rev. Nichols-Roy. Both these gentlemen have signed the report of the Committee to which I have referred and that Committee says that the limits of the Shillong Municipality should be what they are now and does not suggest any change in the status of the people living in that area.

The Honorable Dr. B. R. Ambedkar: That they may have done but the report cannot act as an estoppel for further re-examination! I do not think we can carry the matter any further. As I said the Drafting Committee felt that this was such a local matter that they could not act without the authority or advice of the principal participants in this matter. We took their advice and we carried out the work. If they think...

Shri Kuladhar Chaliha: In Dimapur people from all over India reside.

Mr. President: There is no use saying anything about Dimapur. He has said nothing about Dimapur.

The Honorable Dr. B. R. Ambedkar: I have so far said nothing about it; I am coming to it.

Now I come to the exclusion of certain areas from the autonomous districts.

In this connection I would like to remind the House of the new article 16-A which has just been passed. I would like you to refer to that In framing article 16-A, two questions were raised. One question related to some two mouzas of what are called the Garo Hills. Along with that the question of the Dimapur area was also raised by my Friend Mr. Chaliha, and I think I am justified in saying that he was present at the Conference. There were three representatives of Assam who were also present at this Conference. Mr. Bardoloi, Rev. Nichols-Roy and Mr. Chaliha and it was considered whether these mouzas of the Garo Hills and the Dimapur area should be separated from the autonomous district. It was said that the conference that it was not desirable to separate them from the autonomous districts because the life of these mouzas—their economic life—was closely bound up with the life of the people in the autonomous districts. It was therefore said that it would be enough if these areas, that is to say, the three mouzas from the Garo Hills and the Dimapur area were separated purely for giving political representation to the inhabitants of this area in the Legislative Assembly. That was definitely stated by my Friend, Mr. Chaliha, who has now raised the question of the Dimapur area. It was therefore at their request and at the instance of these three representatives of Assam that paragraph 16-A was framed in the terms in which it has been framed. If at that time they agreed that there should be a complete separation, that this should not form part of the autonomous area, we would have had no objection to carrying out their wishes. Therefore, it is no use blaming the Drafting Committee for doing something which it was not advised to do. That is my first submission. Paragraph 16-A

embodies the concrete conclusions of the Drafting Committee and of the three representatives of Assam, including Mr. Chaliha, who for the first time raised the matter of the Dimapur area.

Shri Kuladhar Chaliha : May I submit that I was asked to go there as an Adviser and to see. I never felt that I was a member of the Drafting Committee and you will not find my name there.

Mr. President: No one has suggested that you were a member of the Drafting Committee. He has said that you were present.

The Honorable Dr. B. R. Ambedkar: That is his opinion. There is a further point to be made, namely, under amendment 99 which gives power to the Governor to alter boundaries, to diminish areas and so on. It would be perfectly possible for the Governor to sever any area, exclude any area from the area now to be included in the autonomous area. If that is not clear, the Drafting Committee would be quite prepared to include an express clause to that effect. But I do like to say that it is very unfortunate, to put it in the very mildest terms possible, that representatives should come to a conference, agree to certain agreement, and then resile from that agreement, bring in amendments and make it a point to comment against the Drafting Committee and say that they have done something which is either contrary to the wishes of the representation...

Shri Kuladhar Chaliha: No.

The Honorable Dr. B. R. Ambedkar: I am very sorry. All I can...

Shri Kuladhar Chaliha : No, no.

The Honorable Dr. B. R. Ambedkar: I am very sorry. Therefore, so far as paragraph 16-A is concerned, it provides separation for the purpose of political requirements. If complete separation is wanted I submit it is already provided for in the paragraph we have passed. If it does not do that, I am prepared to add a clause to make that thing quite clear that the Governor will have power to exclude any area if he thinks fit. So far as my amendment contained in new paragraph 19 is concerned I believe that all points of controversy have been answered.

Now, Sir, I propose to deal with my Honorable Friend Mr. Kunzru's amendment which is for the addition of another paragraph. It will be noticed that his amendment is nothing but a repetition of paragraph 5 of the Fifth Schedule which has already been passed and which deals with tribal areas or scheduled areas in States other than Assam. There is nothing more in his amendment than this. My submission as against his amendment is this: so far as sub-clause (1) of his new paragraph is concerned, it is quite unnecessary, it is governed by paragraph 12(b) of the Sixth Schedule which gives the Governor the power either to apply or not to apply or if apply, apply with modifications laws made by

Parliament or laws made by the legislature of Assam. Therefore, that provision is absolutely unnecessary, and is already contained in our Draft.

With regard to the second sub-clause (2), the position is this. It is quite true that so far as the Fifth Schedule is concerned, we do give the Governor the power to make regulations in respect of that area, but we do not propose to give that power to the Governor in the case of the Sixth Schedule. It is for this reason that in the case of the Fifth Schedule the tribes have no authority to make any regulations for themselves, but in the case of the Sixth Schedule, we have given the district council and the regional council the right to make laws in certain respects. It seems to me, therefore, that where the tribes have not been given the power to make regulations it is necessary to give the power to the Governor to make regulations. But, where the tribal councils themselves have been given power to make regulations it seems to me that conferring powers upon the Governor to make similar regulations is utterly superfluous. That is the reason why we do not propose to give the power to the Governor so far as the Sixth Schedule is concerned. I therefore submit that this amendment is quite unnecessary.

There is one other point which I would like to make quite clear. The power to make regulations which it is proposed to give to the District Council under the Sixth Schedule is not a new power at all. As a matter of fact there exists now in Assam certain regulations which give the tribes the same power of making regulations which we are giving by our Schedule. *The* Schedule therefore is not anything new. It is merely continuing the existing position, namely, that the tribes have the power now to make regulations in certain matters. Therefore, for the reasons I have explained his amendment is quite unnecessary. I therefore oppose it.

Mr. President: I was going to suggest that there is really not as much difference in the view points expressed here as would appear from the discussion that we have had. As I have followed Dr. Ambedkar's statement, I believe that if two suggestions are accepted, probably much of the differences will disappear, I was going to suggest therefore that he should include clause (d) of sub-paragraph (2) of paragraph 10 in the proviso.

The Honorable Dr. B. R. Ambedkar: If we leave it to the Drafting Committee it will do that.

Mr. President: I was going to suggest that we add to clause (d) of sub-paragraph (3) in amendment No. 99, after the words "diminish the area of an autonomous district" the words "or exclude any are from an autonomous district." This would cover all the points.

The Honorable Dr. B. R. Ambedkar: That we are quite prepared to do.

Mr. President: I find this difficulty. Most of the Members of the House

including myself are not acquainted with the local situation and are therefore not in a position to take any definite line of our own with regard to Assam. We have to be guided by friends from there. Since there is difference in some respects among them, our position becomes very difficult. I would therefore suggest that it would be best to leave the thing to be dealt with by the local Government. The suggestions which I have made will enable the local Government to deal with this matter. I understand that Dr. Ambedkar has no objection to the two suggestions I have made.

The Honorable Dr. B. R. Ambedkar: No, Sir. I am prepared to add 10(2)(d) to the proviso and also add, ' power to exclude ' in the other case.

Mr. President: I think that will satisfy the Friends from Assam.

Mr. President: The proposal is different under paragraph 19,

The Honorable Rev. J. J. M. Nichols-Roy : I do not see any reason why you should put under paragraph 19 a matter which is already covered by paragraph 10.

Mr. President: The idea is to put in " sub-clause (d) of sub-paragraph (2) of paragraph 10 ", not the whole of paragraph 10.

The Honorable Rev. J. J. M. Nichols-Roy: What is the use of putting it here in this proviso? It is already there under paragraph 10.

The Honorable Dr. B. R. Ambedkar: Sub-clause (d) of subparagraph (2) of paragraph 10 covers only trading, not money-lending. That is what is sought to be included.

Mr. President: As regards the question of exclusion, it was in the original draft.

The Honorable Dr. B. R. Ambedkar: Mr. Nichols-Roy, it is all right. I do not think you stand to lose anything.

The Honorable Rev. J. J. M. Nichols-Roy: I am asking you whether or not you are going to put in the text an amendment to the effect giving power to Governor to exclude any area of an autonomous district.

The Honorable Dr. B. R. Ambedkar: " Exclude " also we are giving. To " diminish " means really " exclude ". Mr. President: " Diminish " means " exclude".

[Paragraph 19, as amended and the Table, Parts I and II were added to the Sixth Schedule.]

(Paragraph 20)

The Honorable Dr. B. R. Ambedkar: Sir, I move:

"That after paragraph 19, the following new paragraph be inserted :—

' 20. *Amendment of the Schedule.*—(1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and when the

Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for purpose of article 304 thereof."

The Honorable Dr. B. R. Ambedkar: I do not accept the amendment (to paragraph 20 of Sibban Lal Saksena).

[The motion of Dr. Ambedkar was adopted. Paragraph 20 was added to the Sixth Schedule. Schedule VI, as amended, was added to the Constitution.]

ARTICLE 281

Mr. President: Then we go to Article 281.

The Honorable Dr. B. R. Ambedkar: I move :

" That for article 281 the following be substituted :—

Interpretation

'281. In this Part, unless the context otherwise requires, the expression ' State ' means a State for the time being specified in Part I or Part III of the First Schedule.' "

(Article 281 was added to the Constitution.)

ARTICLE 282 TO 282-C

The Honorable B. R. Ambedkar: Sir, I move

" That with reference to amendment No. 3034 of the List of Amendments (Volume II), for article 282, the following articles be substituted :—

Recruitment and conditions of service of persons serving the Union or a State.

282. Subject to the provisions of this Constitution, Acts of the appropriate ' Legislature may regulate the recruitment and conditions of service of persons appointed to public services, and to posts in connection with the affairs of the Union or of any State.

Provided that it shall be competent for the President in the case of services and posts in connection with the affairs of the Union and for the Governor or, as the case may be, the Ruler of a State in the case of services and posts in connection with the affairs of the State to make rules regulating the recruitment and the conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

Tenure of office or persons serving the Union or a State.

282-A. (1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor or, as the case may be, the Ruler of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor or Ruler of the State, any contract under which a person, not being a member of a defence service or of an All-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or, the Governor or the Ruler, as the case may be deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is for reasons not connected with any misconduct on his part, required to vacate that post.

Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or State.

282-B. (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this cause shall not apply—

(a) where a person is dismissed, or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause;

(c) where the President or Governor or Ruler, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give notice to any person under clause (b) of the proviso to clause (2) of this article, the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.

All India Services

282-C. (1) Notwithstanding anything in Part IX of this Constitution, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do. Parliament may by law provide for the creation of one or more All-India Services common to the Union and the States, and subject to the other provisions of this Chapter, regulate the recruitment and the conditions of service of persons appointed to any such service.

(2) The services known on the date of commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.' " Sir, I do not propose, at this stage, to say anything on the amendment I have moved, because the article themselves are quite clear. There are several amendments which may raise some points of criticism, and I shall then be in a position to give the House the explanations that may be necessary in order to dispose of those amendments.

The Honorable Dr. B. R. Ambedkar: I think my friend has said enough on the point and he need not continue. We have understood his point. We must get through today at least one article.

Dr. Monomohan Das : If that is the case. I shall stop.

Mr. President: The Honorable Member (Mr. Kamath) has exceeded his time-limit. Does Dr. Ambedkar like to speak?

The Honorable Dr. B. R. Ambedkar: I do not accept any of the amendments.

[All amendments were negatived.]

ARTICLE 282-B

Shri R. K. Sidhva: We are prepared to sit and finish. We can sit for seven or eight hours.

Mr. President: That is not possible. We cannot sit for eight hours. After all we work like human beings. We cannot work like machines. So I do not think it will be possible. What do you say. Dr. Ambedkar, is it possible to have an afternoon sitting today?

The Honorable Dr. B. R. Ambedkar: I expect to be back from the Cabinet meeting at about half past five. If the House is prepared to sit for two hours after that, I am quite prepared, but we have a Drafting Committee meeting from half past five onwards, because unless we are ready with the articles which have already been held up, it will be difficult to proceed. We have to go to another place to obtain a decision and then to come here. If the House so wishes, we can change the sitting of the Drafting Committee to some other

time.

Mr. Naziruddin Ahmad : .. .There are various offences like assault, trespass, technical defamation and similar things which are compendi-ously described as offences not involving moral turpitude. In all such cases if the office master tries to drive him off, all that we ask for is that he should be given an opportunity to show cause.

The Honorable Dr. B. R. Ambedkar (Bombay : General) : There is no amendment to delete clause (3). Your amendment is only to delete subclause (b).

Mr. Naziruddin Ahmad : Yes, I have given notice of this amendment too. See amendment No. 246.

The Honorable Dr. B. R. Ambedkar: There is an amendment by Mr. Jaspat Roy Kapoor to delete clause (3) of 282B.

Mr. President: There is an amendment by the Honorable Member (Mr. Naziruddin Ahmad) also.

The Honorable Dr. B. R. Ambedkar: He can go on; I merely wanted to draw his attention.

Mr. President: I shall now put the amendments to vole Dr. Ambedkar, do you wish to say anything?

The Honorable Dr. B. R. Ambedkar: I should like to say one or two words. Sir.

As I listened to the criticisms made by the various speakers who have moved their amendments I have come to the conclusion that they have not succeeded in making a clear distinction between two matters which are absolutely distinct and separate: these matters are grounds for dismissal and ground's for not giving notice. This article 282-B does not deal with the grounds of dismissal. The matter will be dealt with by the law that will be made by the appropriate legislature under the provisions of article 282. In what cases a person appointed to the civil service should be dismissed from service would be a matter that would be regulated by law made by Parliament. It is not the purpose of this article 282-B to deal with that matter.

This article is 282-B merely deals with, as I stated, the grounds for not giving notice before dismissal so that a parson may have an opportunity of showing cause against the action proposed to be taken against him. The purport of this clause is to lay down a general proposition that in every case notice shall be given, but in three cases which have been mentioned in sub-clauses (a), (b) and (c), notice need not be given. That is all what the article says. It has been, in my judgement, a very wrong criticism which has been made by my

Honorable Friend Mr. Kamath that this article is a disgrace or a shame or a blot on the Constitution.

Shri H. V. Kamath : (Interruption)...

The Honorable Dr. B. R. Ambedkar: I should have thought that that was probably the best provision that we have for the safety and security of the civil service, because it contains a fundamental limitation upon the authority to dismiss. It says that no man shall be dismissed unless he has been given an opportunity to explain why he should not be dismissed. If such a provision is a matter of disgrace, then I must differ from my Honorable Friend Mr. Kamath in his sense of propriety.

Shri H. V. Kamath : I am referring to the provisos to the article.

The Honorable Dr. B. R. Ambedkar: I am coming to the provisos. So far as clause (2) is concerned, I have no doubt in my mind that everybody who has got common sense would agree that this is the best proviso that could have been devised for the protection of the persons engaged in the civil service of the State. The question has been raised that any person who has been convicted in any criminal case need not be given notice. There, again, I must submit that there has been a mistake, because, the regulations made by a State may well provide that although a person is convicted of a criminal offence, if that offence does not involve moral turpitude, he need not be dismissed from the State service. It is perfectly open for Parliament to so legislate. It is not in every criminal charge, for instance, under the motoring law or under some trivial law made by Parliament or by a State making a certain act an offence, that that would necessarily be a ground for dismissal. It would be open to Parliament to say in what cases there need not be any dismissal. It would be perfectly open to Parliament to exclude political offences. This clause in so many words merely deals with the question of giving notice. Parliament may exempt punishment for offences of apolitical character, exempt offences which do not involve moral turpitude. That liberty of the Parliament is not touched or restricted by sub-clause (a). I want to make this clear.

With regard to sub-clause (b), this has been bodily taken from section 240 of the Government of India Act. I think it will be agreed that the object of introducing section 240 of the Government of India Act was to give protection to the services. Even the British people, who were very keen on giving protection to the civil services, thought it necessary to introduce a proviso like sub-clause (b). We have therefore not introduced a new thing which had not existed before. With regard to sub-clause (c), it has been felt that there may be certain cases where the mere disclosure of a charge might affect the security of the State. Therefore it is provided that under sub-clause (c) the President may say that in certain cases a notice shall not be served. I think that is a very salutary

provision and notwithstanding the obvious criticism that may be made that it open a wide door to the President to abrogate the provisions contained in subclause (2), I am inclined to think that in the better interests of the State, it ought to be retained.

Coming to clause (3), this has been deliberately introduced. Suppose, this clause (3) was not there, what would be the position? The position would be that any person, who has not been given notice under sub-clause (a) or (b) or (c), would be entitled to go to a court of law and say that he has been dismissed without giving him an opportunity to show cause. Now, courts have taken two different views with regard to the word 'satisfaction': is it a subjective state of mind of the officer himself or an objection state, that is to say, depending upon circumstances? It has been felt in a matter of this sort, it is better to oust the jurisdiction of the court and to make the decision of the officer final. That is the reason why this clause (3) had to be introduced that no Court shall be able to call in question if the officer feels that it is impracticable to give reasonable notice or the President thinks that under certain circumstances notice need not be given.

Now, another misapprehension which I should like to clear is this. Some people think that under the provisions regarding civil service which I have introduced the Government has an absolute unfettered right to dismiss any civil servant and that this power is aggravated by the introduction of sub-clauses (a), (b) and (c) of clause ("2). I submit that again is a misapprehension because under the provisions relating to Public Service Commission which we have passed already there is a provision that every civil servant who is aggrieved by any action taken by an officer relating to the conditions of service will have a right of appeal to the Public Service Commission. Therefore, even in cases where the Government has not given the officer an opportunity to show cause, even such an officer will have the right to go to the Public Service Commission and to file an appeal that he has been wrongfully dismissed contrary to the provisions contained in the rules made relating to his service. I, therefore, think that the apprehensions which have been expressed by Honorable Members with regard to the provisions contained in this article are entirely misfounded and are due to misunderstanding of the provisions of this Act, the provisions of article 282 and the provision relating to Public Service Commission.

[In all, 15 amendments were negatived. The original amendment of Dr. Ambedkar—Article 282-B was adopted, and added to the Constitution.]

ARTICLE 282-C

Mr. President: There is no other amendment to this article. You wanted to

speaking. Dr. Deshmukh.

Dr. P. S. Deshmukh : Sir, I support the amendment moved by my Friend Shri Brajeshwar Prasad in regard to the omission of the words :

" If the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do."

I had intended to move a similar amendment. No. 250, but I do not propose to move it now since an identical amendment has been moved. I have been unable to understand this provision. Nowhere has the initiative in any important matter been left to any other House except the House of the People in the Central Parliament. But here for the first time, according to my knowledge and information, we give the initiative to the Council of States. Sir, either the central services are desirable or they are undesirable. If they are desirable, then they should not be cramped with so many impediments, created in the way of their being started. If they are undesirable, then there should not have been any provision whatsoever. I think, more and more there will be the tendency to have all-India services, and therefore in my opinion there was no point in making their introduction so difficult. Why should the proposal have the support of not less than two-thirds of the members present and voting of the Council of States? I think those words are absolutely unnecessary, unless they are intended to clothe the useless House of the Council of States with some dignity or some function. I think that appears to be the only anxiety at the root of this brain-wave, of giving the initiation of such an important matter to the Council of States. I see no purpose for these words and therefore move that they be omitted.

Mr. President: Dr. Ambedkar, would you like to say anything?

The Honorable Dr. B. R. Ambedkar: Just one word. I think neither Mr. Brajeshwar Prasad nor my friend Dr. Deshmukh, the one in moving the amendment and the other in supporting it, seems to have read carefully the provisions of article 282. Article 282 proceeds by laying down the proposition that the Center will have the authority to recruit for services which are under the Center and each State shall be free to make recruitment and lay down conditions of service for persons who are to be under the State service. We have, therefore, by article 282 provided complete jurisdiction. 282C to some extent takes away the autonomy given to the States by article 282, and obviously if this autonomy is subsequently to be invaded, there must be some authority conferred upon the Center to do so, and the only method of providing authority to the Center to run into, so to say, article 282 is to secure the consent of two third's of the members of the Upper Chamber. The Upper Chamber is the only body mentioned in article 282. *Ex-hypothesi* the Upper Chamber

represents the States and therefore their resolution would be tantamount to an authority given by the States. That is the reason why these words are introduced in article 282C.

[The motion of Dr. Ambedkar was adopted. Amendment by Brijeshwar Prasad was rejected. Article 282-C was added to the Constitution.]

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